

Item 4

REPORT TO CABINET

21st SEPTEMBER 2006

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

HOUSING PORTFOLIO

CHANGES TO HOUSING LAW LEGISLATION

1. SUMMARY

- 1.1 This report focuses on the changes, which have been introduced by the Housing Act 2004 and the Anti-Social Behaviour Act 2003. The Housing Act 2004 implements new recovery provisions under the Right to Buy scheme, in particular the use of discretionary powers on repayment of discount.
- 1.2 The 2004 Act also allows for introductory tenancies to be extended for a further 6 months.
- 1.3 The Anti-Social Behaviour Act 2003 enables Local Authorities to deal more effectively with anti-social behaviour, including powers to demote a secure tenancy and to obtain Anti-Social Behaviour Injunctions.

2. RECOMMENDATIONS

- 2.1 That Cabinet note the new provisions concerning Right to Buy, demoted tenancies, extension of introductory tenancies and Anti-Social Behaviour Injunctions.
- 2.2 That comprehensive policy and procedural guidance be prepared jointly by Officers of the Housing Department and Legal Section, in consultation with appropriate Tenant Groups and other stakeholders. A draft of that policy and procedural guidance be presented to Cabinet for consideration no later than January 11th, 2007.
- 2.3 Following the adoption of the policy and procedural guidance appropriate training be provided on the legislation detailed in this report directed specifically at Officers, and specialised training be provided for Housing Review Panel Members.

3. DETAIL – RIGHT TO BUY

- 3.1 The Housing Act 2004 amends the Housing Act 1985 and makes further changes to the Right to Buy rules, as part of the Governments drive to modernise the system.

3.2 The Government has introduced the particular changes detailed to tackle profiteering and lessen the impact of Right to Buy sales on the availability of affordable housing.

3.3 **The 2004 Act -**

- makes it clear that landlords have discretion to waive repayment of discount (this is designed to address cases where repayment could involve genuine hardship – detailed further in 3.4 to 3.8 inclusive).

Some of the other amendments made, in addition to the recoverability of discount discretion, include:-

- extending the initial qualification period from two years to five years for new tenants;
- extending the period after sale during which landlords may require owners to repay some or all of their discount on early resale, from three years to five years. The current repayment taper of 100/66/33 per cent has been changed to 100/80/60/40/20 per cent.
- requiring owners who wish to resell properties within 10 years of them being sold under the Right to Buy to offer them back to a local social landlord (the Local Authority or RSL) at market value. Landlords have always been able to do this for properties in National Parks, Areas of Outstanding Natural Beauty, and areas designated as 'rural' for this purpose, of which there are now 37. The Act extends this power to other areas.
- transferring jurisdiction over appeals by tenants denied the Right to Buy on the grounds that their homes are particularly suitable for occupation by elderly persons from the Secretary of State to Residential Property Tribunals.

3.4 **Right to Buy – The Use of Discretionary Powers on Repayment of Discount:** S.185 of the Housing Act 2004 clarifies that Local Authorities now have discretion not to demand that former tenants should repay part or all of the discount they received.

3.5 It is for each Local Authority to decide whether the circumstances in any particular case would justify the exercise of this discretion under s.155 of the Housing Act 1985 as amended. However, the Government considers that this is most likely to be justified in circumstances where repayment would lead to demonstrable personal hardship.

3.6 Examples of circumstances where discretion might be justified include the following: (In each case, it will normally be necessary to establish both the facts justifying a move, and that such a move could not take place unless part or the entire repayable discount were to be waived);

- Where an owner of the property wishes to move because otherwise he or she and/or other family members (especially children) face demonstrable threat of violence or of significant harm; for example, due to:

- a) Relationship breakdowns involving actual or threatened domestic violence;
 - b) Racial, faith, homophobic or any other kind of harassment;
 - c) Extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property;
 - Where the sudden onset of a severe medical condition or serious deterioration of an existing condition makes a move essential on medical grounds;
 - Where an early move is essential to return to employment; for instance where an individual has a firm offer of a job in another area and would thereby be able to return to work; either:
 - a) After long term unemployment; or
 - b) After having been made redundant, when his/her skills are such that there is no prospect of getting another job locally.
 - Where a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons.
- 3.7 It is envisaged that this discretionary power will only be used in exceptional circumstances.
- 3.8 It is for the Local Authority to decide what procedures to use, and whether or not such decisions should be subject to review and, if so, by what means. Amendments have been made to the constitution to give the Housing Review Panel/Appeals Panel power to determine an appeal from a decision of an Officer in such circumstances.
- 3.9 **EXTENSION OF INTRODUCTORY TENANCIES:** New provisions have been introduced under the Housing Act 2004 for introductory tenancies. S.179 of the Act enables introductory tenancies to be extended for a further 6 months beyond the initial 12 months. The Local Authority must serve a notice of extension on the tenant at least 8 weeks prior to the original expiry date.
- 3.10 A notice of extension is a notice stating that the Local Authority has decided that the period during which the tenancy is to be an introductory tenancy should be extended by 6 months and must set out the reasons for the decision, inform the tenant of their right to request a review and within the time which a request must be made.
- 3.11 Statutory Instrument 2006 No. 1077, The Introductory Tenancies (Review of Decisions to Extend a Trial Period) (England) Regulations 2006 provides that the tenant is entitled to request an oral hearing and sets out how this right is to be exercised. The Local Authority must give the tenant at least 10 clear day's notice of the date, time and place of review. The review must be carried out by a person who was not involved in the original decision.
- 3.12 **DEMOTED TENANCIES:** A demoted tenancy is a one-year probationary tenancy, introduced by the Anti-Social Behaviour Act 2003. Demotion ends the tenant's existing tenancy and replaces it with a less secure one by removing a number of their tenancy rights,

thereby acting as a positive incentive to the tenant to change their behaviour.

- 3.13 The demotion period, is initially 1 year, however, this may be extended if possession is sought during this time. Following the expiry of the demotion period (and assuming an order for possession has not been sought during this time) the demoted tenancy reverts back to the original tenancy.
- 3.14 Demotion Orders can only be made by a Court following service of a Notice of intent to do so and only in circumstances of allegations of anti-social behaviour (not for instance rent arrears).
- 3.15 During the period of demotion the Council has the power to seek possession of a property similarly to the power in Introductory Tenancies through a Notice procedure and a Court MUST make a possession order in such circumstances if the Council's review procedure has been exhausted.
- 3.16 **ANTI-SOCIAL BEHAVIOUR INJUNCTIONS("ASBI"):** Under the Anti-Social Behaviour Act 2003, injunctions are available where conduct is capable of causing nuisance or annoyance to any person, and directly or indirectly relates to or affects housing management functions. This is in addition to and an alternative to the powers which the Crime and Disorder Act provide for Police/Council's to apply for Anti-Social Behaviour Orders (ASBO's).
- 3.17 This Council has obtained 1 ASBI against an individual who was not a tenant (in August, 2005) which continues in force until December, 2006. This Injunction has been breached on several occasions leading to custodial sentences being imposed on the Defendant in 3 instances (last on 28th July, 2006 when a 12 week sentence was handed down).
- 3.18 **APPEALS/REVIEWS GENERALLY:** The constitutional amendments which are referred to at 3.8 also include powers given to Officers to serve appropriate Notices under the new legislation and delegated powers given to the Housing Review Panel to consider challenges to such Notices.

4. FINANCIAL IMPLICATIONS

- 4.1 Potentially, complete loss of discount recoverability if none-recovery is allowed by an Officer under delegated powers or authorised by the Housing Review Panel (3.4 to 3.8).
- 4.2 There may be additional costs incurred due to more proceedings being issued at Court as a result of the powers given in the statutory amendments referred to.

5. CONSULTATIONS

- 5.1 Management Team has considered this report on the 11th September 2006.

6. OTHER MATERIAL CONSIDERATIONS

6.1 Legal and Constitutional

The Council's Constitution has been and continues to be amended accordingly to give delegated authority to Officers and Committees so that the legislative changes can be implemented.

6.2 Amendments to the Constitution include the use of the Appeals/Review Panel.

7. OVERVIEW AND SCRUTINY IMPLICATIONS

7.1 No Overview and Scrutiny implications apply.

8. LIST OF APPENDICES

8.1 No appendices.

Contact Officer: Andrew Traynor
Telephone Number: 01388 816166, Ext. 4281
E-mail address: atraynor@sedgefield.gov.uk
Wards: N/A
Key Decision Validation: N/A

Background Papers

Housing Act 2004

Anti-Social Behaviour Act 2003

S.I. 2006 No. 1077 - The Introductory Tenancies (Review of Decisions to Extend a Trial Period) (England) Regulations 2006

Report to Council – Arrangements for Review of the Constitution – 28th July 2006

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>

This page is intentionally left blank